UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

JERMAINE ALI WILSON,

Movant,

v. **6:05-cv-120**

UNITED STATES OF AMERICA,

Respondent.

ORDER

I. INTRODUCTION

Wilson moves to vacate, set aside, or correct his federal prison sentence under 28 U.S.C. § 2255. *See* Doc. 41. Because this is Wilson's second § 2255 motion attacking the same 2003 conviction for conspiring to distribute and attempting to possess crack and powder cocaine, *see* Docs. 4, 7, and he failed to secure the Eleventh Circuit's permission to file such a motion, the Court dismissed the petition. *See* Docs. 42, 44, 46.

The Court construes Wilson's notice of appeal as a request for a Certificate of Appealability ("COA"). *See Edwards v. United States*, 114 F.3d 1083, 1084 (11th Cir. 1997).

II. ANALYSIS

A. Certificate of Appealability

"Before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first seek and obtain a COA . . ." *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *see* 28 U.S.C. § 2253(c). The Court will issue a COA "where a petitioner has made a substantial showing of the denial of a constitutional right." *Miller-El*, 537 U.S. at 336. Wilson "must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Id.* (internal quotations omitted).

> When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000) (emphasis added).

It is not debatable that Wilson's habeas petition was procedurally barred as a successive habeas petition. *See* 28 U.S.C. § 2255(h); *Levert v. United States*, 280 F. App'x 936, 936 (11th Cir. 2008).

B. *In Forma Pauperis*

"An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). Good faith means that an issue exists on appeal that is not frivolous when judged under an objective standard. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Busch v. Cnty. of Volusia*, 189 F.R.D. 687, 691 (M.D. Fla. 1999). A claim

is frivolous if it is "without arguable merit either in law or fact." *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

Wilson's claims are frivolous and his appeal is not taken in good faith.

His implied COA motion, *see* Doc. 51, is ***DENIED***, and he is not permitted to appeal *in forma pauperis*.

This 21st day of June 2011.

B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA